

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

RUEBEN SMITH, JR.,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:05CV102-P-B

**RETZER RESOURCES, INC. d/b/a
MCDONALD'S and VIGILANT
INSURANCE COMPANY,**

DEFENDANT.

ORDER

This matter comes before the court upon Plaintiff's Motion for an Award of Attorney's Fees and Expenses [12-1]. After due consideration of the motion and the responses filed thereto, the court finds that the motion should be denied. Although remand was ordered in this case, the court finds that the conduct of the defendants regarding removal does not justify an award of attorney fees to the plaintiff. Rather, the defendants positions in their removal and their response to the plaintiff's motion to remand were objectively reasonable even though they were ultimately unsuccessful.

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff's Motion for an Award of Attorney's Fees and Expenses [12-1] is **DENIED**.

SO ORDERED this the 18th day of August, A.D., 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE